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Attorneys for Plaintiffs

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IMMIGRANT LEGAL RESOURCE CENTER;
EAST BAY SANCTUARY COVENANT;
COALITION FOR HUMANE IMMIGRANT
RIGHTS; CATHOLIC LEGAL IMMIGRATION
NETWORK, INC.; INTERNATIONAL
RESCUE COMMITTEE; ONEAMERICA;
ASIAN COUNSELING AND REFERRAL
SERVICE; ILLINOIS COALITION FOR
IMMIGRANT AND REFUGEE RIGHTS,

Plaintiffs,

v.

CHAD F. WOLF, *under the title of Acting
Secretary of Homeland Security*; U.S.
DEPARTMENT OF HOMELAND SECURITY;
KENNETH T. CUCCINELLI, *under the title of
Senior Official Performing the Duties of the
Deputy Secretary of Homeland Security*; U.S.
CITIZENSHIP & IMMIGRATION SERVICES

Defendants.

Case No. 4:20-cv-05883-JSW

**PLAINTIFFS' NOTICE OF FILING
RELEVANT DOCUMENTS AND
REQUEST FOR SUPPLEMENTAL
BRIEFING**

Assigned to Hon. Jeffrey S. White

Date: September 25, 2020
Time: 9:00 a.m.
Courtroom: 5, 2nd Floor

JURY TRIAL DEMANDED

NOTICE OF FILING

Plaintiffs Immigrant Legal Resource Center, East Bay Sanctuary Covenant, Coalition for Humane Immigrant Rights, Catholic Legal Immigration Network, Inc., International Rescue Committee, OneAmerica, Asian Counseling and Referral Service, and Illinois Coalition for Immigrant and Refugee Rights (collectively “Plaintiffs”) hereby notify the Court and all parties of the filing of the following attached Exhibits:

Exhibit 1: Letter from Neal J. Swartz, Associate General Counsel for General Law, Department of Homeland Security, to Michael R. Pence, President of the Senate (dated Apr. 16, 2018), and with attached form labeled “Submission Under the Federal Vacancies Reform Act.”

Exhibit 2: Letter from Neal J. Swartz, Associate General Counsel for General Law, Department of Homeland Security, to Michael R. Pence, President of the Senate (dated Apr. 11, 2019), and with attached form labeled “Submission Under the Federal Vacancies Reform Act.”

Exhibit 3: Letter from Neal J. Swartz, Associate General Counsel for General Law, Department of Homeland Security, to Michael R. Pence, President of the Senate (dated Apr. 11, 2019), and with attached form labeled “Submission Under the Federal Vacancies Reform Act.”

In support of this notice, Plaintiffs state the following:

1. These three documents were filed by Defendants Wolf, DHS, and USCIS as exhibits to a filing in a case proceeding in New York federal court that, like this case, challenges the validity of Defendant Wolf’s service as acting DHS secretary, as well as that of his predecessor Kevin McAleenan. *See* Defs.’ Resps. to Pls.’ Civl. L.R. 56.1 Statement, *Batalla Vidal et al. v. Wolf et al.*, No. 1:16-cv-04756-NGG-JO (E.D.N.Y. Sept. 11, 2020), ECF No. 324.¹

2. Plaintiffs believe that these documents are both relevant to the issues presented in this Case and in Plaintiffs’ Motion for Preliminary Injunction specifically, and that the Court would benefit from seeing all relevant information in deciding the important issues presented here.

¹ Plaintiffs can provide this filing to the Court upon request.

MOTION FOR SUPPLEMENTAL BRIEFING

Furthermore, pursuant to Civil Local Rules 7-3(d) and 7-11, Plaintiffs also respectfully request leave of Court to file a short supplemental brief explaining why Plaintiffs believe the documents filed herewith, when considered in context with the documents filed with Defendants' amicus response, are relevant to Plaintiffs' claims and support Plaintiffs' positions. In the interest of equity and fairness, Plaintiffs do not oppose the Court's granting the same opportunity to Defendants' counsel.

In support of this motion, Plaintiffs state the following:

1. The Court's Order Granting Joint Motion to Modify Schedule As Modified permitted *amici curiae* to file responses to Plaintiff's Motion for Preliminary Injunction by September 9, 2020, and permitted Defendants to file replies to those *amicus* briefs by September 15, 2020 at 12:00 p.m. ECF No. 31 at 2. It also directed Plaintiffs to file their reply brief by September 15, 2020, at 12:00 p.m., the same time. *Id.*

2. Plaintiffs timely filed their Reply Brief in Support of Preliminary Injunction. *See* ECF No. 74.

3. Roughly simultaneously, Defendants timely filed their Memorandum of Points and Authorities in Response to the Briefs of *Amici Curiae*. *See* ECF No. 75 ("Amicus Response").

4. Defendants' Amicus Response included 10 attached documents totaling approximately 113 additional pages in support of their response to amici.

5. These additional documents were not previously part of the record before this Court. *See* ECF No. 75.

6. Plaintiffs' counsel did not anticipate that Defendants would include additional record evidence in conjunction with their Amicus Response.

7. As set forth above, the documents attached to Defendants' Amicus Response include 10 out of 13 documents Defendants filed in the *Batalla Vidal* case in the Eastern District of New York on September 11, 2020. The remaining three documents submitted by Defendants in *Batalla*

Vidal, but not in this case, are attached herewith as the exhibits to this Notice of Filing and Request for Supplemental Briefing.

8. *Batalla Vidal* raises the same challenge to the service of Defendant Wolf raised in this case. *See* Fourth Am. Compl. ¶¶ 192-210, *Batalla Vidal v. Wolf*, No. 1:16-cv-04756 (NGG)(JO) (E.D.N.Y. Aug. 28, 2020), ECF No. 308.²

9. Plaintiffs believe all 13 documents submitted by Defendants in the *Batalla Vidal* case are relevant to this case and to the pending Motion for Preliminary Injunction specifically. Plaintiffs also believe that the 13 documents collectively support Plaintiffs' positions, and request an opportunity to concisely set forth their views on these documents.

10. On September 16, 2020, Plaintiffs' counsel contacted Defendants' counsel, and Defendants indicated that they will not oppose this Motion for supplemental briefing provided Defendants receive an opportunity to set forth their views on the documents and their relevance, if any. *See* Declaration of Jesse Bless.

11. Plaintiffs do not oppose the Court's granting the same opportunity to Defendants' counsel.

For these reasons, Plaintiffs respectfully request that the Court grant Plaintiff's Request for Supplemental Briefing and permit both Plaintiffs and Defendants to file a 5-page supplemental brief setting forth their respective views by Monday, September 21, 2020 at 12:00 p.m.

Dated: September 16, 2020.

Respectfully submitted,

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